



HUBR 1067.3 DIV (10105485)  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Christoph Seidel et al.

Application No.: 09/896,032

Confirmation No.: 2111

Filed: June 29, 2001

Art Unit: 1648

For: METHOD FOR DETERMINING EARLY HCV  
SEROCONVERSION

Examiner: T. M. Brown

**RESPONSE TO NON-FINAL OFFICE ACTION**

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is submitted in response to the Office Action of August 23, 2005. A one-month extension of time is required, and a request, with fee, accompany this response. All of claims 40-48 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. There are no other issues raised by the Examiner.

Applicants have considered the Examiner's position, traverse, and request reconsideration.

The Examiner cites to In re Wands, as establishing what factors are considered in determining whether it would require undue experimentation to practice a claimed invention; however, the Examiner now fails to take cognizance of In re Marzocchi, which clearly and unequivocally establishes that the burden of showing lack of enablement rests with the USPTO. In other words, claims are presumed to be enabled. The burden is on the USPTO to rebut the presumption. The Examiner has failed to do so.

The Examiner argues that the scope of the claims is such that the modifications encompassed "would have an unpredictable effect on antigenicity."